

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ROBERT WAYNE MAURER,

Plaintiff,

v.

WILLIAM BELCHER, et al.,

Defendants.

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No. 4:17cv02199 PLC

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's motion to amend his complaint [ECF No. 6] in this prisoner civil rights action pursued under 42 U.S.C. § 1983.

Background

By his complaint, Plaintiff seeks monetary and other relief from the following Defendants: William Belcher, Detective Fasson, Jason Beckhoff, and Detective McGee of the St. Louis County Police Department, who Plaintiff sues in their official and individual capacities.¹ Plaintiff alleges Defendants are liable for Plaintiff's "illegal arrest, [Plaintiff's] false imprisonment[,] [and use of] excessive force" while arresting Plaintiff on January 11, 2016 without a warrant; "false statements" by a named individual; and failing to honor Plaintiff's "constant[]" requests for an attorney.²

In granting Plaintiff *in forma pauperis* status in this proceeding, the Court noted Plaintiff had not signed the original complaint and, based on Rule 11(a) of the Federal Rules of Civil

¹ Pl's compl. [ECF No. 8].

² Pl's compl. at 2 and 5 [ECF No. 8].

Procedure, provided Plaintiff the opportunity to file a signed complaint.³ Plaintiff subsequently filed a signed complaint (referred to as the “pending complaint”).⁴ Neither review of the pending complaint under 28 U.S.C. Sections 1915 and 1915A, nor service of process of the pending complaint on any Defendant has occurred as of this date.

By his motion, Plaintiff asks the Court to amend the pending complaint by adding as Defendants the following detectives from the St. Louis County Police Department: Unknown Faasen, Unknown Reynolds, Unknown Merritt, Unknown Berry, and Unknown Avery.⁵ Plaintiff did not state in his motion what claim(s) he pursues against any of the proposed Defendants. Additionally, Plaintiff did not submit with his motion a proposed amended complaint listing these (and the originally named) Defendants and setting forth the claim(s) he pursues against each Defendant.

Discussion

Rule 15 of the Federal Rules of Civil Procedure allows a litigant to amend a “pleading once as a matter of course” until twenty-one days after the original pleading is served. Rule 15(a)(1)(A). Because Plaintiff has not previously filed an amended complaint in this proceeding and no service of the pending complaint has occurred, Plaintiff may “as a matter of course” amend his pending complaint. Therefore, the Court grants Plaintiff’s motion to amend.

Importantly, when a prisoner files a civil action seeking “redress from a governmental entity or officer or employee of a governmental entity,” a court must review the complaint “as soon as practicable after docketing.” 28 U.S.C. § 1915A(a). During that review, the court must

³ See Mem. and Order, filed August 28, 2017 [ECF No. 7].

⁴ Pl.’s signed compl. [ECF No. 8].

⁵ Pl.’s mot. amend [ECF No. 6]. While Plaintiff does not provide a first name for any of the five Defendants Plaintiff seeks to add, Plaintiff does provide a “DSN” number for each of the proposed Defendants. Id.

“identify cognizable claims or dismiss the complaint, or any portion of the complaint,” if the court finds it is frivolous, is malicious, fails to state a claim upon which relief may be granted, or “seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b); see also 28 U.S.C. § 1915(e)(2) (providing for pre-service dismissal of a civil complaint filed in forma pauperis for the same reasons). A court is not able to engage in proper review of the complaint under Sections 1915A and 1915 in the absence of a pleading setting forth each claim against each Defendant. Therefore, the Court will order Plaintiff to file a signed amended complaint in accordance with this Memorandum and Order.

The signed amended complaint must comply with Rules 8 and 10 of the Federal Rules of Civil Procedure. Rule 8(a) requires that a complaint contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for the relief sought. Rule 10(b) requires that the pleader state its claims in separately numbered paragraphs, each limited as far as practicable to a single set of circumstances. In the “Caption” section of the amended complaint, Plaintiff must state the first and last name, to the extent he knows it, of each defendant he wishes to sue, and state whether each defendant is sued in his or her individual capacity, official capacity, or both. In the “Statement of Claim” section, Plaintiff must include each and every claim he wishes to bring against each and every defendant in this action, including references to any federal constitutional or statutory laws forming the basis of Plaintiff’s claim(s). Additionally, personally identifying information, including complete social security numbers, dates of birth, home addresses, and minor children’s names, must not be stated in the amended complaint that is filed in the public record. See, e.g., Local Rule 5-2.17(A)(2).

Plaintiff must submit the amended complaint on the court-provided form for a prisoner civil rights action under Section 1983 that the Clerk will send Plaintiff. The filing of an amended

complaint replaces the original complaint, and claims that are not re-alleged in the amended complaint are deemed abandoned. See In re Wireless Tele. Fed. Cost Recovery Fees Litig., 396 F.3d 922, 928 (8th Cir. 2005); accord Bernard v. United States Dep't of the Interior, 674 F.3d 904, 909 (8th Cir. 2012) (concluding the plaintiffs abandoned a claim for money damages under the Tucker Act by “amending their complaint to eliminate all reference to that claim”). Upon review of the amended complaint, the Court may dismiss one or more claims or one or more defendants if Plaintiff fails: (1) to set forth specific and actionable allegations supporting each claim against each defendant or (2) to avoid dismissal under Sections 1915A and 1915.

Accordingly, after careful consideration,

IT IS HEREBY ORDERED that Plaintiff’s motion for leave to amend [ECF No. 6] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk of Court shall mail to Plaintiff a form Prisoner Civil Rights Complaint Under 42 U.S.C. § 1983.

IT IS FURTHER ORDERED that, within thirty (30) days after the date of this Memorandum and Order, Plaintiff shall file his signed amended complaint. **Plaintiff’s failure timely to file a signed amended complaint in accordance with this Memorandum and Order shall result in the dismissal without prejudice of this action without further notice to Plaintiff and without further proceedings.**



PATRICIA L. COHEN
UNITED STATES MAGISTRATE JUDGE

Dated this 16th day of November, 2017